A **MUHAMMAD AMIN ANUAR v. SEOW JING HUI & ORS**

HIGH COURT MALAYA, SHAH ALAM
JAMHIRAH ALI JC
[SUIT NO: BA-22NCvC-11-01-2021]
23 JUNE 2023

B

Abstract – *A Mareva injunction has a high threshold as the consequences are very severe, far-reaching and could cause incalculable harm and damage. Seeing that it is a harsh order, it is only fitting that an applicant must strictly fulfil the requirements set for the granting of a Mareva injunction before the same could be granted.*

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CIVIL PROCEDURE: *Injunction – Mareva injunction – Application for – Requirements – Claim premised upon conspiracy, fraud, forgery, misconduct and criminal offences – Whether requirements for granting of Mareva injunction fulfilled – Whether there was good arguable case – Whether there were assets within jurisdiction – Whether there was real risk of assets being dissipated or removed – Whether Mareva injunction ought to be granted – Courts of Judicature Act 1964, s. 25(2) & para. 6 of Schedule – Rules of Court 2012, O. 29 r. 1 & O. 92 r. 4*

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The plaintiff, an advocate and solicitor, was a legal assistant at the first defendant's firm. The first defendant's firm was subsequently merged with Tetuan Ling & Theng Book ('third defendant'). According to the plaintiff, (i) the defendants had induced and deceived him into establishing a law firm under his own name, which he subsequently established, with the understanding that he would be the sole proprietor; (ii) the first and second defendants' plan was to transfer their clients and litigation files to the plaintiff's firm while maintaining control over the said files, in order to protect the reputation of the third defendant, which represented banking institutions and moneylenders; and (iii) there was an unlawful interference in the management of the plaintiff's firm as the defendants unlawfully misused his firm's name on their documents. The defendants had abused the plaintiff's firm's identity, including the plaintiff's email, e-Filing system ('EFS') account, letterhead and signature, in relation to a civil suit ('MyGPS case'). The defendants also misused the plaintiff's firm's identity, signature and rubber stamp to forge transactions related to conveyancing, which were managed by the defendants. The plaintiffs submitted that the actions constituted fraud and a conspiracy to injure the plaintiff. Hence, the present claim by the plaintiff for an interim *Mareva* injunction against the defendants, pursuant to s. 25(2) read together with para. 6 of the Schedule to the Courts of Judicature Act 1964 and/or O. 29 r. 1 and/or O. 92 r. 4 of the Rules of Court 2012.

Held (dismissing application with costs):

(1) The three main criteria that needed to be met for the granting of a *Mareva* injunction were: (i) the plaintiff must have a good arguable case; (ii) the defendant had assets within the jurisdiction; and (iii) there was a real risk of the assets being dissipated or removed before the judgment in that there must be solid evidence to establish the risk. The plaintiff failed to fulfil the requirements for a *Mareva* injunction. The plaintiff's application was misguided and misconceived in law as the reliefs sought were akin to an interlocutory injunction and not a *Mareva* injunction. (paras 13, 18, 19 & 67)

(2) The use of the plaintiff's email, EFS account, signature and letterhead was not done with any malicious intent to harm or deprive the plaintiff; this usage was with the full knowledge, consent and permission of the plaintiff. The usage was also carried out with the intent to conduct the MyGPS case as mutually arranged and agreed upon between the defendants and the plaintiff. Contrary to the allegation of forgery in the plaintiff's conveyancing files, evidence indicated that the plaintiff independently handled his own personal conveyancing matters in association with one David and the fifth defendant. There was also no evidence to show that there was a collaboration or an involvement between the first to fourth defendants in relation to the plaintiff's personal conveyancing files. (paras 37 & 38)

(3) In making the application for a *Mareva* injunction, the plaintiff had an obligation to provide full and frank disclosure of material facts. It was evident that the plaintiff had attempted to conceal the material facts pertaining to his consent, admission and authorisation for the defendants to utilise his email, EFS account, signature and letterhead. The plaintiff's own communications, *res ipsa loquitur*, disclosed there was no abuse of his identity or his firm's identity. Moreover, the plaintiff did not provide full and transparent disclosure and, instead, he was not truthful to the court in seeking the equitable remedy. It could not be said that the plaintiff had a good arguable case. (paras 14, 42 & 43)

(4) The plaintiff failed to prove that the defendant had assets within the jurisdiction. The assets referred to in the application were not assets that could be frozen if a *Mareva* injunction was ordered. The assets sought were not assets of the defendants and, in particular, the third defendant. Further, the documents, identity cards, business cards, land titles, sale and purchase agreements and all the documents related to real estate transactions sought in the application for a *Mareva* injunction were not assets which, if dissipated, would stultify any judgment in favour of the

plaintiff. Moreover, the plaintiff had no lien on the land titles, the sale and purchase agreements and the related documents sought; he had no *locus* to ask for these documents, especially so when the plaintiff was unsure whom were the parties involved. There was also no evidence that the purported assets were in the possession of the defendants. (paras 21, 45, 46 & 47)

(5) The risk must be a real risk and not a mere fear that the assets would be dissipated and the existence of the real risk must be supported by solid evidence. The plaintiff submitted that there was a real risk that the purported assets would be dissipated because, upon the filing of the present action, the third defendant had moved its office. According to the plaintiff, the defendants' act proved that they had already acted to dissipate the purported assets. The plaintiff could not merely presume, without proving, that there was a real risk. Merely relocating to a new premise did not constitute solid evidence to support the claim that the defendants would engage in assets dissipation. Furthermore, the plaintiff did not provide any evidence demonstrating that the defendants acted dishonestly, thus posing a risk of asset dissipation. (paras 57-59 & 62)

Case(s) referred to:

All Kurma Sdn Bhd v. Teoh Heng Tatt & Ors [2022] 9 CLJ 526 HC ***(refd)***
American Cyanamid Co v. Ethicon Ltd [1975] 1 All ER 504 ***(refd)***
Aspatra Sdn Bhd & Ors v. Bank Bumiputra (M) Bhd & Anor [1987] 2 CLJ 377; [1987] CLJ (Rep) 50 SC ***(refd)***
Bakmawar Sdn Bhd v. Malayan Banking Bhd [1991] 3 CLJ 1759; [1991] 2 CLJ (Rep) 323 HC ***(refd)***
Cheow Chew Khoon v. Abdul Johari Abdul Rahman [1995] 4 CLJ 127 CA ***(refd)***
Creative Furnishing Sdn Bhd v. Wong Koi [1989] 2 CLJ 93; [1989] 1 CLJ (Rep) 22 SC ***(refd)***
Itramas Technology Sdn Bhd v. Maju Holdings Sdn Bhd & Ors [2020] 1 LNS 1487 HC ***(refd)***
Keet Gerald Francis Noel John v. Mohd Noor & Ors [1995] 1 CLJ 293 CA ***(refd)***
Lee Kai Wuen & Anor v. Lee Yee Wuen [2022] 7 CLJ 505 CA ***(refd)***
Menk Sdn Bhd v. Joerg Hugo Schmidt [2009] 4 CLJ 795 CA ***(refd)***
Motor Sports International Ltd & Ors v. Delcont (M) Sdn Bhd [1996] 3 CLJ 483 CA ***(refd)***
Ninemia Maritime Corporation v. Trave Schiffahrtsgesellschaft mbH & Co KG [1983] 1 WLR 1412 ***(refd)***
S & F International Ltd v. Trans-Con Engineering Sdn Bhd [1985] 2 CLJ 228; [1985] CLJ (Rep) 280 FC ***(refd)***
Zainal Abidin Hj Abdul Rahman v. Century Hotel Sdn Bhd [1982] 1 LNS 34 FC ***(refd)***

Legislation referred to:

Courts of Judicature Act 1964, s. 25(2), Schedule para 6
Rules of Court 2012, O. 24, O. 29 r. 1, O. 92 r. 4

For the plaintiff - Muhammad Amin Anuar; M/s Amin Chambers
For the defendants - David Gurupatham & Venothaniraja Gopal; M/s David Gurupatham & Koay

Reported by Najib Tamby

JUDGMENT

Jamhirah Ali JC:

Introduction

[1] This is the plaintiff's application *vide* encl. 12 for an interim *Mareva* injunction against the defendants pursuant to s. 25(2) of the Courts of Judicature Act 1964 read together with para. 6 of the Schedule to the said Act and/or O. 29 r. 1 and/or O. 92 r. 4 of the Rules of Court 2012.

Brief Facts

[2] In a nutshell, the plaintiff's allegations in the statement of claim against the defendants involve conspiracy, fraud, forgery, misconduct, and criminal offences.

[3] The plaintiff is an advocate and solicitor of the High Court of Malaya. In December 2018, the plaintiff was hired by the first defendant as legal assistant in the first defendant's firm Messrs Jing Wani & Co, which subsequently merged with the third defendant. The plaintiff alleged that the defendants had induced and deceived him into establishing a law firm in Shah Alam under his own name, with the understanding that he would be the sole proprietor. The defendants informed him that if he failed to establish the firm, his employment will be terminated. Consequently, on 20 November 2019, the plaintiff established his law firm known as Tetuan Amin Chambers.

[4] The plaintiff claimed that despite the establishment of Tetuan Amin Chambers, the plaintiff received regular payments from the third defendant till September 2020. The third defendant had continued to make contributions to the plaintiff's Employment Provident Fund (EPF); and the third defendant also persisted in giving the plaintiff instructions as if he was still employed by the third defendant.

[5] The plaintiff contended that the first and second defendants orchestrated a deceptive plan by instructing him to establish his firm. According to the plaintiff's claim, this plan was a ploy to transfer clients and litigation files from the first and second defendants to the plaintiff's firm while maintaining control over the files. The alleged purpose of this manoeuvre was to protect the reputation of the third defendant, which represented 14 banking institutions, including moneylenders among its clients. The plaintiff asserted that he was promised commission for handling the litigation and conveyancing files through his firm, but the defendants reneged on this promise. Consequently, the plaintiff was not compensated as agreed for the services rendered by his firm.

[6] The plaintiff also claimed that there was unlawful interference in the management of his firm and the defendants unlawfully misused his firm's name on their documents. The plaintiff alleged that these actions constitute fraud and a conspiracy to injure the plaintiff.

[7] Amongst others, the plaintiff alleged that the defendants had abused the plaintiff's firm's identity, including the plaintiff's email, e-filing system account, letterhead, and signature, in relation to a civil suit known as "MyGPS case" (No. BA-172NCVC-1375-08/2020).

[8] The plaintiff also alleged that the defendants had misused the plaintiff's firm's identity, signature, and rubber stamp to forge transactions related to conveyancing, which were purportedly co-managed by all the defendants.

[9] Hence, the plaintiff in his claim had sought reliefs including declarations, injunctions, orders for account, and damages.

[10] The plaintiff filed this application for an interim *Mareva* injunction in encl. 12 on 4 February 2021. It is important to note the reliefs sought by the plaintiff which are as follows:

> 1. Defendan-Defendan sama ada secara sendiri atau menerusi mana-mana peguam, firma guaman, kakitangan, pekerja, ejen, anggota, pegawai, pengkhidmat atau selainnya bagaimanapun adalah dilarang daripada mengeluarkan dan/atau menggunakan dan/atau melupuskan dan/atau mengalihkan dan/atau memindahkan dan/atau menukar hakmilik dan/atau memindahkan hakmilik dan/atau kepentingannya dalam apa jua cara mengurangkan nilai aset-aset berikut yang kini berada di dalam milikan, kawalan dan jagaan Defendan-Defendan, iaitu:
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> (a) Sebarang bentuk dokumen yang mempamerkan dan/atau menunjukkan identiti Plaintif dan identiti firma guaman Tetuan Amin Chambers milik Plaintif, termasuk tetapi tidak terhad kepada salinan kad pengenalan, kad Perniagaan (business card) dan salinannya, sebarang bentuk rubber stamp mengandungi identiti Plaintif dan firma Plaintif, nama Plaintif, sebarang dokumen yang mengandungi nombor kad pengenalan Plaintif, nombor daftar peguam Plaintif, surat yang mengandungi kepada surat beridentitikan firma guaman Plaintif, Tetuan Amin Chambers dan/atau plaintiff; dan
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> (b) Bahawa semua Defendan-Defendan sama ada secara sendiri atau menerusi mana-mana peguam, firma guaman, kakitangan, pekerja, ejen, anggota, pegawai, pengkhidmat atau selainnya bagaimanapun adalah dilarang dan dihalang daripada menjalankan semua dan sebarang transaksi pindahmilik Hartanah (conveyancing), dokumentasi, transaksi, perjanjian dan sebarang urusan dengan semua Pejabat Tanah (Land Office), Lembaga Hasil Dalam Negeri, semua institusi kewangan termasuk tetapi tidak terhad kepada bank, Bank Kooperasi, dan yang melibatkan sebarang jenis pinjaman

wang, perjanjian pinjaman wang berlesen (moneylending transaction and agreements) sebarang transaksi Pinjaman dan/atau fasiliti dan/atau kemudahan pinjaman wang terutama yang melibatkan hartanah sebagai cagaran; dan

(c) Bahawa semua Defendan-Defendan sama ada secara sendiri atau menerusi mana-mana peguam, firma guaman, kakitangan, pekerja, ejen, anggota, pegawai, pengkhidmat atau selainnya bagaimanapun adalah dilarang dan dihalang daripada menggunakan logo, konfigurasi grafik, lambang-lambang, pemakaian, dan rekabentuk di dalam laman web, invois-invois, surat-menyurat dan/atau apa-apa dokumen Plaintif; dan

(d) Bahawa semua Defendan-Defendan sama ada secara sendiri atau menerusi mana-mana peguam, firma guaman, kakitangan, pekerja, ejen, anggota, pegawai, pengkhidmat atau selainnya bagaimanapun adalah dilarang dan dihalang daripada mengakses dan menggunakan semua akaun-akaun e-mel dan media sosial Plaintif di Facebook, Instagram dan Linkedin; dan

(e) Bahawa Defendan-Defendan sama ada secara sendiri atau menerusi mana-mana peguam, firma guaman, kakitangan, pekerja, ejen, anggota, pegawai, pengkhidmat atau selainnya bagaimanapun adalah dilarang dan adalah dihalang daripada membuat apa-apa kata atau pernyataan sama ada melalui digital, internet, e-mel, aplikasi Whatsapp, WeChat, Facebook SMS, surat menyurat dan/atau lain-lain dokumen untuk menyimpulkan sama ada secara tersurat mahupun tersirat bahawa Defendan-Defendan kononnya berkait ataupun merupakan sebahagian daripada Plaintif; dan

(f) Bahawa Defendan-Defendan sama ada secara sendiri atau menerusi mana-mana peguam, firma guaman, kakitangan, pekerja, ejen, anggota, pegawai, pengkhidmat atau selainnya bagaimanapun adalah dilarang dan adalah dihalang daripada mengakses dan/atau melupuskan kesemua emel dan/atau dokumen-dokumen yang pada asalnya disimpan di dalam server dan/atau komputer dan/atau sebarang peralatan elektronik yang berupaya menyimpan sebarang data digital milik Plaintif yang Defendan-Defendan yang kini berada di dalam milikan, kawalan dan jagaan Defendan-Defendan; dan

(g) Bahawa Defendan-Defendan sama ada secara sendiri atau menerusi mana-mana peguam, firma guaman, kakitangan, pekerja, ejen, anggota, pegawai, pengkhidmat atau selainnya bagaimanapun adalah dilarang dan adalah dihalang daripada mengeluarkan dan/atau menggunakan dan/atau melupuskan dan/atau mengalihkan dan/atau memindahkan dan/atau dalam apa jua cara, semua dan sebarang dokumen, perjanjian jual beli, kontrak, Power of Atorney, Borang 14A (Kanun Tanah Negara), semua dokumen berkaitan transaksi hartanah, gadaian, kaveat, kaveat pemegang Lien, surat, notis, dokumen, surat aku janji, borang-borang termasuk tetapi tidak terhad kepada borang dibawah Kanun Tanah Negara, borang dibawah Akta Pemberi Pinjam Wang 1951 termasuk tetapi tidak

terhad kepada Perjanjian Jadual K dan Perjanjian Jadual J yang menggunakan nama Plaintif atau firma guaman Plaintif (Muhammad Amin bin Anuar dan/atau Amin Chambers), yang menggunakan kepala surat "Amin Chambers", semua dan sebarang salinan dokumen menggunakan kepada surat merujuk kepada firma guaman Plaintif, Tetuan Amin Chambers; dan

(h) Bahawa Defendan-Defendan sama ada secara sendiri atau menerusi mana-mana peguam, firma guaman, kakitangan, pekerja, ejen, anggota, pegawai, pengkhidmat atau selainnya bagaimanapun adalah dilarang dan adalah dihalang daripada mengeluarkan dan/atau menggunakan dan/atau melupuskan dan/atau mengalihkan dan/atau memindahkan dan/atau dalam apa jua cara, semua fail dan keseluruhan fail dan isi kandungan fail yang mengandungi dokumen yang disediakan menggunakan nama dan identiti Plaintif, alamat firma guaman Plaintif termasuk tetapi tidak terhad kepada Perenggan-Perenggan 1(a) dan 1(f) di atas, serta dokumen asal dan salinan hakmilik/Geran dan semua dokumen asal dan salinan dokumen perserahan melibatkan nama Plaintif dan firma guaman Plaintif, termasuk tetapi tidak terhad kepada dokumen seperti berikut:

Jenis Hakmilik [Kod]

1. Geran (Geran)
2. Pajakan Negeri (PN)
3. Geran mukim (GM)
4. Pajakan Mukim (PM)
5. Hakmilik sementara Daerah (HSD)
6. Hakmilik sementara mukim (HSM)
7. Pajakan Mukim (PM)

Perserahan [Kod]

1. Pembetulan dibawah sesksyen 380 KTN [BETUL]
2. Permohonan carian makiumat pemilik petak (AGM) [CMC]
3. Gadaian menjamin wang pokok [GD]
4. Gadaian menjamin wang pokok (Kementerian Kewangan) [GDF].
5. Melepaskan gadaian [GDL]
6. Melepaskan gadaian (Kementerian Kewangan) [GDLF]
7. Permohonan hakmilik hilang hancur (Individu & Syarikat) [HHIS]
8. Kaveat pemegang lien atas kepentingan [KVLK]

9. Menarik balik kaveat pemegang lien atas kepentingan [KVLTB]
10. Tarik balik kaveat persendirian atas sebab kepentingan [KVSTB]
11. Perintah jual oleh mahkamah [PJM]
12. Perintah jual oleh pentadbir [PJP]
13. Pindahmilik tanah [PMT]
14. Pendaftaran pemegang amanah [PNPA]
15. Surat amanah [SA]
16. Surat kuasa wakil (Individu) [SKWI]
17. Surat kuasa wakil (Syarikat) [SWKS]
18. Tukar alamat [TA]
19. Turun milik akibat kematian (Borang E) [TMAME]
20. Turun milik akibat kematian (Borang F) [TMAMF]
21. Turun milik akibat kematian (Grant og Probate) [TMAMG]
22. Turun milik akibat kematian (L.A) [TMAML]
23. Turun milik akibat kematian (Borang T) [TMAMT]
24. Pajakan [PJKT]
25. Tenansi [TEN]
26. Pajakan [PJBT]
27. Pajakan [PJT]

(i) Kesemua dan keseluruhan fail-fail yang mengandungi dokumen transaksi hartanah termasuk tetapi tidak terhad kepada kesemua yang dinyatakan pada Perenggan-Perenggan 1(a), 1(b) dan 1 (h) di atas di bawah nama-nama dan/atau butiran yang berkenaan dengan transaksi, butiran dan nama (termasuk tetapi tidak terhad kepada) seperti berikut:

(i) Perjanjian Jual Beli Bertarikh 12 Oktober 2020 dan Disetem Pada 13 Oktober 2020 untuk Hartanah Apartmen Kos Rendah yang dikenali sebagai PN 21006/M1/8/143, Lot No. 43149 Seksyen 14, Bandar Ampang, Daerah Hulu Langat, Negeri Selangor Alamat: Pc1-07-23e, Permai Court 1, Jalan 16a, Taman Desa Permai, Taman Dato Ahmad Razali, 68000 Ampang, Selangor

Penjual: Gee The @ Zaithon Binti Mohamad Kassim (No. K/P: 640225-10-6566)

Pembeli: Law Kong Yew (No. K/P: 970226-14-5761)

Dan

(ii) Perjanjian Jual Beli Bertarikh 24 September 2020 dan disetem pada 25 September 2020 untuk Hartanah yang dikenali sebagai GM 4950, Lot 203 Seksyen 1 & Gm 4951, Lot 204 Seksyen 1, Bandar Jenjarum, Daerah Kuala Langat, Negeri Selangor

Alamat: No. 60, Jalan Bayam 3, Taman Desa Jarum, 42600 Jenjarom, Selangor

Penjual: Gonasigran a/l Periasamy (No. K/P: 540329-10-5121)

Pembeli: Adrian Lee Wen Jian (No. K/P: 910306-05-5171)

Dan

Kesemua dan keseluruhan fail yang mengandungi nama-nama berikut:

(i) Yasotha Devi;

(ii) Kalairasi;

(iii) Ahmad Hafis;

(iv) Hema Lata a/p Vilusammy;

(v) Vijayakumaran a/l Vellayan

Dan

Kesemua dan keseluruhan fail yang mengandungi nama syarikat-syarikat yang menjalankan aktiviti pemberi pinjam wang (sama ada berlesen ataupun tidak dibawah Akta Pemberi Pinjam Wang 1951) seperti berikut:

(i) Biz Smile Capital Sdn Bhd (No. Syarikat 131840-k); dan

(ii) Semuamas Resources Sdn Bhd (No. Syarikat 1041126-H); dan

(iii) Galaxy Potu Sdn Bhd (No. Syarikat: 983384-V); dan

(iv) Sun Gate Avenue Sdn Bhd (No. Syarikat: 1253586-M); dan

(v) UPG Capital Sdn Bhd (No. Syarikat 1305609-X);

2. Bahawa Plaintif diberi kebebasan untuk memfailkan apa-apa permohonan sekiranya perlu;

3. Lanjutan dan/atau secara alternatifnya, Bahawa Plaintif diberi injunksi dan relif lain-lain terhadap Defendan-Defendan berdasarkan terma-terma yang dinyatakan dalam deraf Perintah Mahkamah pada Lampiran A atau dengan pengubahsuaiannya sebagaimana yang difikirkan sesuai oleh Mahkamah yang Mulia ini;

4. Bahawa kos dan yang berkaitan dengan permohonan ini adalah kos dalam kausa;

5. Bahawa Mahkamah Yang Mulia ini menetapkan tarikh perbicaraan antara pihak (*inter partes*) untuk permohonan ini;

6. Bahawa pihak Plaintif bebas untuk memohon dan diberikan Perintah dan/atau Penghakiman seperti dipohon; dan

7. Perintah, arahan atau relif yang lebih lanjut dan lain-lain yang difikirkan wajar oleh Mahkamah Yang Mulia ini.

The Law Pertaining To The Grant Of *Mareva* Injunction

[11] The purpose of the *Mareva* injunction is to preserve assets and prevent the defendants from dissipating their assets within jurisdiction before judgment (see: *Aspatra Sdn Bhd & Ors v. Bank Bumiputra (M) Bhd & Anor* [1987] 2 CLJ 377; [1987] CLJ (Rep) 50; [1988] 1 MLJ 97). The Federal Court in *Zainal Abidin Hj Abdul Rahman v. Century Hotel Sdn Bhd* [1982] 1 LNS 34; 1 MLJ 260, Raja Azlan Shah CJ (Malaya) (as HRH was then) had said:

> The *Mareva* injunction is an established feature of English law. The English courts have provided guidelines in the scope, logistics and machinery of the *Mareva* injunction. It is a copy book example of the consequences of judicial intervention by way of a new doctrine. *It is an injunction granted ex parte against a defendant in a pending action to restrain him from removing assets from and now even dissipating them within the jurisdiction and so stultifying any judgment in favour of the plaintiff.* It has been steadily widened so that it is now available in a personal injury claim (see *Allen v. Jambo Holdings Ltd & Ors* [1980] 2 All ER 502) and where the defendant is not a foreigner or foreign based (see *Barclay-Johnson v. Yuill* [1981] 3 All ER 190). Although the extensions were perhaps inevitable the judges have indicated that the jurisdiction must not be stretched too far lest it be endangered. It must not be debased into something invoked to obtain security for a judgment in advance, or pressuring a defendant into a settlement. "The courts must be vigilant to ensure that a *Mareva* defendant is not treated like a judgment debtor" (see *A.J. Bekhor & Co. Ltd. v. Bilton* (*supra* – [1981] 2 All ER 577)). *It is consequently not accurate to refer to a Mareva injunction as a pre-trial attachment* (see *Cretanor Maritime Co Ltd v. Irish Maritime Management Ltd* [1978] 1 Lloyd's Rep 425).
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> (emphasis added)

[12] Further, in the case of *S & F International Ltd v. Trans-Con Engineering Sdn Bhd* [1985] 2 CLJ 228; [1985] CLJ (Rep) 280; [1985] 1 MLJ 62, the Federal Court held:

> The order known as a *Mareva* injunction – so named after the case of *Mareva Compania Naviera SA v. International Bulkcarriers SA* [1980] 1 All ER 213 decided in June, 1975 and the second case in which the English Court of Appeal granted this form of relief – *is a species of interlocutory injunction which restrains a defendant by himself or by his agents or servants or otherwise from removing from the jurisdiction or disposing of or dealing with those of his assets that will or may be necessary to meet a plaintiff's pending claim*. The policy underlying and the principles governing an order of this nature have been expounded and ossified in a catenation of congeneric cases and the relief so afforded

when the circumstances of a case merit it has been acknowledged by this court in *Zainal Abidin bin Haji Abdul Rahman v. Century Hotel Sdn Bhd* [1982] 1 MLJ 260 in the matter of jurisdiction to avail here.(emphasis added)

[13] The principles and legal framework governing the application of a *Mareva* injunction are well-established. The Supreme Court case of *Creative Furnishing Sdn Bhd v. Wong Koi* [1989] 2 CLJ 93; [1989] 1 CLJ (Rep) 22; [1989] 2 MLJ 153 laid out the three main criteria that need to be met, which are as follows:

(i) the applicant (plaintiff) must have a good arguable case;

(ii) the defendant has assets within the jurisdiction;

(iii) there is a real risk of the assets being dissipated or removed before the judgment in that there must be solid evidence to establish the risk.

[14] In making the application for a *Mareva* injunction, the plaintiff has an obligation to provide full and frank disclosure of material facts. This was elucidated in the case of *Creative Furnishing Sdn Bhd v. Wong Koi* (*supra*), whereby the court stated:

> Further, in presenting affidavit evidence to establish the necessary ingredients for an *ex parte* order for a *Mareva* injunction, *it is incumbent on the applicant to make frank and full disclosures of all material facts. Every material representation must not be misleading, and there must not be any suppression of material facts*. Failure to do so at the crucial time of making the *ex parte* application would invariably be fatal. On this particular point we approve the judgment of VC George J in *KSM Credit & Leasing Sdn Bhd v. Data Mante (M) Sdn Bhd & Ors* [1986] 1 CLJ 500 on the applicability of the principle of frank and full disclosures in all *ex parte* applications for *Mareva* injunctions. (emphasis added)

[15] The Court of Appeal in *Menk Sdn Bhd v. Joerg Hugo Schmidt* [2009] 4 CLJ 795 held as follows:

> [19] In order to succeed in satisfying the above requirements of a good arguable case, much depends on the circumstances of the case, and invariably will depend on the available evidence, normally gleaned from the affidavits. Whether there is any asset within the jurisdiction likewise will depend very much on factual evidence, though more often than not, defendants are more co-operative on this matter. The issue of risk of whether the assets will be removed from the Malaysian jurisdiction before judgment is satisfied, is more difficult to prove, and issues of probity may arise. It may touch on the conduct of the defendant, the clandestine manner the assets are being removed and the like. In *CBS United Kingdom Ltd v. Lambert & Anor* [1982] 3 All ER 237 Lawton LJ at 242 had remarked:
>
> > In my judgment an affidavit in support of a *Mareva* injunction should give enough particulars of the plaintiff's case to enable the court to assess its strength and should set out what inquiries have been made about the defendant's business and what information has been revealed, including that relating to its size, origins,

> business, domicile, the location of its known assets land the circumstances in which the dispute has arisen. **These facts should enable a commercial judge to infer whether there is likely to be any real risk of default** ... (emphasis added)

[16] In the process of deciding whether to grant a *Mareva* injunction, the court must consider the entirety of the evidence. In this regard, I am guided by the passage from the case of *Menk Sdn Bhd v. Joerg Hugo Schmidt* (*supra*):

> [26] To arrive at a finding that a case is arguable, let alone a good arguable case, a judge hearing a *Mareva* injunction application must assess the available evidence beforehand. Unless that is done, the presiding judge will be unable to decide whether the applicant has a fair chance of obtaining judgment, if the matter were to go for trial (*Biasamas Sdn Bhd & 3 Ors v. Kan Yan Heng* [1998] 4 CLJ 754). In *Ninemia Maritime Corp v. Trave Schiffahrthesellshaft mbH & Co.* [1983] 1 MLJ 1412 Mustill J (QBD) had occasion to state:
>
> > That the judge hearing a *Mareva* application is not only entitled but bound to make some assessment of the plaintiff's chance of success at the trial is, I believe, not open to dispute.
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> > The buyers had appealed against Mustill J's decision. In the course of dismissing the appeal, Kerr LJ had stated:
> >
> > > It follows that the evidence, including the evidence on the second question posed by the judge to which we turn in a moment, must be looked at as a whole. A 'good arguable case' is no doubt the minimum which the plaintiff must show in order to cross what the judge rightly described as the 'threshold' for the exercise of the jurisdiction. **But at the end of the day the court must consider the evidence as a whole in deciding whether or not to exercise this statutory jurisdiction**.
> >
> > (emphasis added)

[17] However, the purpose of a *Mareva* injunction is not to grant the plaintiff priority over the defendants' assets or to place the plaintiff in the position of a secured creditor. This principle was emphasised in the case of *S & F International Limited v. Trans-Con Engineering Sdn Bhd* (*supra*), where the Federal Court held:

> It might perhaps be convenient at this stage to concisely perpend the principles and policy underlying a *Mareva* order elucidated in a chain of related cases of which we need only refer to three. In *PCW (Underwriting Agencies) Ltd v. Dixon & Anor* [1983] 2 All ER 158 which sets out the policy underlying the *Mareva* jurisdiction, it was held that *the sole purpose of a Mareva injunction was to prevent a plaintiff being cheated out of the proceeds of an action, should he be successful, by a defendant transferring his assets abroad or dissipating his assets within the jurisdiction, and that the remedy was not intended to give a plaintiff priority over those assets, or to prevent a defendant from paying*

A *his debts as they fell due, or to punish him for his alleged misdeeds, or to enable a plaintiff to exert pressure on him to settle an action*. This decision of Lloyd J went on appeal to the Court of Appeal ([1983] 2 All ER 697) which however did not deliver a judgment but by consent allowed the appeal and varied the Judge's order, but the principles enunciated by Lloyd J, were unaffected by the consensual variation made in the light of the
B factual circumstances of that case. The English Court of Appeal has also held in *Campbell Mussells & Ors v. Thompson & Anor*, The Times, 30 May 1984 that a *Mareva* injunction was never intended to put a plaintiff in the position of a secured creditor and every case had to be dealt with on its own merits. (emphasis added)

C **Findings Of The Court**

[18] Upon perusal of the cause papers and having read the written submissions filed by the parties and having heard their oral submissions, I find the plaintiff failed to fulfil the requirement for a *Mareva* injunction and therefore I dismissed the plaintiff's application for an interim *Mareva*
D injunction with costs of RM15,000.

[19] A *Mareva* injunction has a high threshold because the consequences are very severe as it is a harsh order, therefore the plaintiff must fulfil the requirements set for the granting of a *Mareva* injunction. At the outset, I find the plaintiff's application is misguided and misconceived in law, as it is my
E considered view that the reliefs sought in the application in encl. 12 are akin to an interlocutory injunction and not a *Mareva* injunction. It is trite that the test applicable for a 'non-*Mareva*' type interlocutory injunction and a *Mareva* injunction is different. The test applicable in the 'non-*Mareva*' type of interlocutory injunction is the test explained in *American Cyanamid Co*
F *v. Ethicon Ltd* [1975] 1 All ER 504 and *Keet Gerald Francis Noel John v. Mohd Noor & Ors* [1995] 1 CLJ 293; [1995] 1 MLJ 193, *ie*, (i) there is a serious question to be tried; (ii) the balance of convenience lies in favour of the applicant; and (iii) that damages are not an adequate remedy, whereas, the test applicable in a *Mareva* injunction, as discussed above, was explained in
G the case of *Creative Furnishing Sdn Bhd v. Wong Koi* (*supra*).

[20] The distinction between the two types of injunctions is explained in the case of *All Kurma Sdn Bhd v. Teoh Heng Tatt & Ors* [2022] 9 CLJ 526; [2023] 7 MLJ 303, the learned Judicial Commissioner referred to the Court of Appeal case of *Lee Kai Wuen & Anor v. Lee Yee Wuen* [2022] 7 CLJ 505;
H [2022] MLJU 3411 and said as follows:

> [102] The issue was answered by the Court of Appeal in *Lee Kui Wuen*, where the following principles were propounded:
>
> (a) there is a distinction between *Mareva* injunctions and other 'non-*Mareva*' interlocutory injunctions pending trial;

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(b) the form of interlocutory injunctions sought in *American Cyanamid* and *Keet Gerald Francis Noel John* were the usual kind of interlocutory injunctions that relate to the reliefs claimed in the 'pleaded causes of action'. The basis for such injunctions is the cause filed and reliefs sought by the plaintiff against the defendant;

(c) *Mareva* and *Mareva*-type injunctions are of 'a different character'. A *Mareva* injunction is not one of the final reliefs sought. A *Mareva* injunction 'bears no dependence on the final relief' of the cause;

(d) instead, the purpose of a *Mareva* injunction is 'to prevent an abuse of the legal process' where a party who is facing judgment intentionally dissipates the assets in question, to avoid having to satisfy the judgment. The balance of convenience is not one of the appropriate criteria for consideration when the court is deciding whether to grant a *Mareva* or *Mareva*-type injunction;

(e) so, the balance of convenience criterion and other related factors such as 'the adequacy of damages' or the irreparability of the damage that may be caused if the interlocutory injunction is not granted-are not factors that need to be considered in a *Mareva* application; and

(f) the elements that need to be satisfied to obtain a *Mareva* or *Mareva*-type injunction remain only these – 'a good arguable case', 'assets in the jurisdiction', and 'a real risk of dissipation of assets' intentioned to render a judgment 'nugatory'.

[21] It is noted that the final order sought by the plaintiff in their statement of claim is similar to the reliefs sought in this application for a *Mareva* injunction. Further, it is noted that the assets sought are not assets of the defendants and the assets referred to in the application are not assets that could be frozen if a *Mareva* injunction was ordered. I will discuss further the type of assets that were involved in this application later below. Therefore, I find that the plaintiff's application was misguided and misconceived in law.

[22] Further, perusal of the plaintiff's supporting affidavit at encl. 13, I find it is merely a repetition of the plaintiff's statement of claim and it does not support or reflect the elements justifying a *Mareva* injunction.

[23] Thus, the plaintiff must specify the reliefs in relation to the type of injunction he is seeking and ensure that the relevant evidence is adduced to meet the requirements for the respective type of injunction. He cannot make an application for a *Mareva* injunction while seeking relief for an interlocutory injunction.

Does The Plaintiff Have A Good Arguable Case?

[24] To establish a good arguable case, it is not required that the plaintiff's case has a greater than 50% chance of success. However, it should be more than just a mere possibility and capable of serious argument. In the Court of Appeal, case of *Lee Kai Wuen & Anor v. Lee Yee Wuen* (*supra*), His Lordship, Darryl Goon Siew Chye JCA explained a good arguable case as follows:

A [61] As the learned judge quite rightly pointed out, in order to establish a good arguable case, it was not necessary that the applicant's case has to have a better than 50% chance of success, although it has to be more than barely capable of serious argument. In the words of Mustill J in *Ninemia Maritime Corporation* at p. 404 of the report above-cited, which was reiterated by the Federal Court in *S & F International Limited* at
B p. 64:

> .... I consider the right course is to adopt *the tests of a good arguable case, in the sense of a case which is more than barely capable of serious argument, and yet not necessarily one which the judge believes to have a better than 50% chance of success*.

C [62] In the decision of this court in *Biasamas Sdn Bhd & Ors v. Kan Yan Heng & Anor* [1998] 4 CLJ 754; [1998] 4 MLJ 1 at p. 759 (CLJ); p. 5 (MLJ), Haidar Mohd Noor JCA delivering the judgment of the court used the phrase, 'a fair chance' of success. This was how Haidar Mohd Noor JCA put it:

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> What is a good arguable case is difficult to define. *The respondents need not show that they have a case so strong as to warrant summary judgment nor even a strong prima facie case. It would generally be sufficient if the respondents can show on the evidence available, there is a fair chance that they will obtain judgment against the appellants* (see *Ninemia Maritime Corp v. Trave Schiffahrtsgesellschaft mbH & Co KG; The*
E *Niedersachsen* [1984] 1 All ER 398, on appeal to CA [1984] 1 All ER 413; [1983] 1 WLR 1412).
>
> (emphasis added)

[25] Further, *Menk Sdn Bhd v. Joerg Hugo Schmidt* (*supra*) also clarified that a good arguable case should not be equated with 'serious issues to be tried'.
F The court is required to go further and assess the facts and the available evidence gleaned from the affidavit in determining whether a good arguable case has been established.

[26] It is duly observed that the plaintiff's application relied on a police
G report (No. SRI MUDA/023893/20) lodged by the plaintiff and their counsel on 28 November 2020. However, the application lacks evidence to substantiate the allegations made against the defendants. These allegations include conspiracy, fraud, forgery, misconduct, and criminal offences as stated in the plaintiff's affidavits in support and in reply. Unfortunately, the plaintiff's affidavits did not provide sufficient evidence to support these
H allegations.

[27] Based on the plaintiff's affidavit, the allegations are as follows:

(i) that the defendants had abused the plaintiff's identity in the MyGPS case;

I (ii) that the defendants had abused and used the plaintiff's EFS account without the plaintiff's authority and consent;

(iii) that the defendants had used and abused the plaintiff's email;

(iv) that the defendants had used, abused, falsified, and forged plaintiff's name and identity, identity card, the identity of the plaintiff's legal firm, signature, name, advocate's registration number, letterhead, rubber stamp, letters, signatures of lawyers and their legal firm, correspondence in various documents, such as undertakings, sale and purchase agreements and other instruments without the plaintiff's authorisation;

(v) that the defendants had falsified the mediation form and the plaintiff's signature therein when it was sent to the mediation centre at the Shah Alam court *via* the plaintiff's email without the plaintiff's knowledge and consent;

(vi) that the defendants had committed forgery and fraud in the plaintiff's conveyancing files; and

(vii) that the defendants had used the plaintiff's and his legal firm's identity in the real estate sale and purchase transaction, as well as real estate loans and/or collateral arrangements involving unlicensed moneylenders and other purchasers. Despite these transactions taking place, no payments have been made through the plaintiff's client's account. Plaintiff also alleged that the banks had approved the loans for the sale and purchase transactions, however the plaintiff had no knowledge and access to the said transactions.

[28] Therefore, the plaintiff claimed that the plaintiff's assets which are currently in the possession, control, and custody of the defendants, are now at risk and in imminent danger. The plaintiff also contended that the said assets are within the court's jurisdiction.

[29] The plaintiff claimed that the plaintiff's only source of livelihood, status, reputation, and good name are under threat, and there is a real risk of the said assets being removed, used, disposed of, transferred, or diminished in value in any way.

[30] The plaintiff had alleged that the defendants had refused and/or failed to return the plaintiff's rubber stamp which has the plaintiff's identity.

[31] It is noted that except for the above-mentioned allegations, the plaintiff's affidavit did not disclose sufficient evidence to support the said allegations.

[32] The defendants in their affidavit in reply to the plaintiff's affidavit had adduced evidence that the plaintiff at all material times was aware and had the full knowledge and had given the authority on all the purported allegations by the plaintiff.

[33] On the allegation of the plaintiff's identity being abused in the MyGPS case, the defendants adduced evidence that the plaintiff failed to disclose their own agreement to the instructions given by the first and second defendants. These instructions explicitly stated that the fourth defendant would be responsible for preparing all the cause papers, attending case management proceedings, and handling any matters related to the MyGPS case. This agreement was discussed in a WhatsApp group ("WG-1") of which the plaintiff was a member. (See: exh. SJH-9, the defendants' affidavit in reply).

[34] Regarding the unauthorised abuse of plaintiff's EFS account, the plaintiff failed to disclose that it was the plaintiff by his own conduct whom in WG-1 has instructed and/or allowed the fourth defendant to attend the case management *via* e-review using the plaintiff's firm's EFS account (see: exh. SJH-9, the defendants' affidavit in reply). Exhibit SJH-9 reveals that the plaintiff has shared his username and password and had authorised the usage and access of Amin Chambers' EFS account.

[35] On the allegation of the abuse of the plaintiff's signature and letterhead, the defendants adduced evidence that the plaintiff failed to disclose his own actions in providing and allowing the defendants to use the plaintiff's firm's letterhead for issuing a letter for the MyGPS case. This information is evident in exh. SJH-11, the defendants' affidavit in reply, which reveals that the plaintiff shared the firm's letterhead with the defendants and requested the defendants to sign and revert for onward e-filing.

[36] Regarding the allegation of forgery and fraud in the plaintiff's personal conveyancing files, the defendants argued that the plaintiff failed to disclose that, except for the fifth defendant in her own personal capacity, the first to fourth defendants were never involved in any of the plaintiff's personal conveyancing files. This fact is explicitly recorded in the plaintiff's WhatsApp conversation with David, who personally negotiated and engaged the plaintiff for his own conveyancing matters. This evidence can be found in exh. SJH-8, the defendants' affidavit in reply.

[37] Therefore, based on the information provided above, it disclosed that the use of the plaintiff's email, EFS account, signature, and letterhead was not done with any malicious intent to harm or deprive the plaintiff. This is supported by the facts that the usage of the said elements was done with the full knowledge, consent, and permission of the plaintiff; and the usage was carried out with the intent to conduct the MyGPS case as mutually arranged and agreed upon between the defendants and the plaintiff.

[38] Contrary to the allegation of forgery in the plaintiff's conveyancing files, the evidence before this court indicated that the plaintiff independently handled his own personal conveyancing matters in association with David

and Yan, the fifth defendant. There is no evidence to show there was collaboration or involvement between the first to fourth defendants in relation to the plaintiff's personal conveyancing files.

[39] From the above evidence adduced by the defendants, I find the plaintiff failed to provide full and frank disclosure of material facts as elucidated in the case of *Creative Furnishing Sdn Bhd v. Wong Koi* (*supra*). Due to the fact that a *Mareva* injunction has a far-reaching effect on the defendants, the plaintiff must come to court with clean hands for a remedy under equity. In the case of *Itramas Technology Sdn Bhd v. Maju Holdings Sdn Bhd & Ors* [2020] 1 LNS 1487; [2020] MLJU 1663, Wan Muhammad Amin bin Wan Yahya J said:

> [87] Notwithstanding this, I am of the considered view that in a *Mareva injunction application a plaintiff should provide full and frank disclosure of material facts even if the application is originally made inter partes by the plaintiff. This is because a Mareva injunction has a far-reaching effect on a defendant and a plaintiff must come to Court with clean hands to show it is entitled to the Mareva injunction regardless of whether the defendant would have the opportunity to put forward his facts and arguments to oppose the Mareva injunction application. An injunction is generally an equitable relief and the duty of the plaintiff to come to Court with clean hands* (*CBM Construction Sdn Bhd v. Builtcon and Development Sdn Bhd* [1999] 2 MLJ 368) ought to include the duty to provide full and frank disclosure of material facts even if it may be against the granting of the *Mareva* injunction. (emphasis added)

[40] Further reference is made to the case of *Bakmawar Sdn Bhd v. Malayan Banking Bhd* [1991] 3 CLJ 1759; [1991] 2 CLJ (Rep) 323 where Siti Norma J (as she then was) stressed the importance of full disclosures in an *ex parte* application of this nature by stating the following:

> It is true that the defendant's letter was exhibited to the plaintiff's *ex parte* application but *it is incumbent upon the plaintiff on an ex parte application of this nature not only to make full disclosures but also to draw attention to all relevant factors so as not to mislead the Court into making an order that it would not have necessarily made*. Had my attention been drawn to the fact that the second limb of the interim injunction was no longer necessary as the Biro had already been informed of the plaintiff's account, I would not have granted the order. *In this case the Court has been misled into believing that the Biro has not yet been informed of the plaintiff's account and on this ground alone, the interim injunction-at least the second limb of the injunction must be dissolved*. (emphasis added)

[41] As the *Mareva* injunction has a serious implication and the order can cause incalculable harm and damage to the defendants, regardless of the plaintiff's application is made *inter partes*, the plaintiff still has the obligation to make full and frank disclosure of the material facts.

[42] It is evident that the plaintiff had attempted to conceal the material facts pertaining to his consent, admission, and authorisation for the defendants to utilise his email, EFS account, signature, and letterhead. The plaintiff's own communications, *res ipsa loquitur*, disclosed there was no abuse of his identity or his firm's identity. Moreover, the plaintiff did not provide full and transparent disclosure, and instead, he was not truthful to the court in seeking the equitable remedy.

[43] Hence, given the circumstances, it cannot be said that the plaintiff has a good arguable case. While there may be grounds for argument, it is not reasonable to assert that the plaintiff has a good arguable case with a fair chance of obtaining judgment based on the evidence presented in this application. As stated in the case of *S & F International Limited v. Trans-Con Engineering Sdn Bhd* (*supra*);

> Mustill, J, held in *Ninemia Maritime Corporation v. Trave Schiffahrtsgesellschaft mbH & Co KG* [1984] 1 All ER at p 413 [1984] 1 All ER; [1983] 1 WLR 1412 398 on appeal to CA that: (1) Before a *Mareva* injunction will be granted, a plaintiff must show first that he has a good arguable case, which is more than being barely capable of serious argument, but not necessarily one that the judge believes has got more than fifty per cent chance of success; (2) Before such relief is granted the plaintiff must secondly show that there is a risk that assets will be dissipated: he must demonstrate this by solid evidence, *eg*, that the defendant's previous actions show his probity is not to be relied upon or that the corporate structure of the defendant infers that it is not to be relied upon, but mere proof that the defendant is incorporated abroad will not suffice; (3) *In reaching its conclusion, the court should take into account the defendant's evidence as well as the plaintiff's*. The English Court of Appeal in dismissing an appeal by the plaintiffs in that case ([1983] 1 WLR 1412; [1984] 1 All ER at page 413) restated the principles of *Mareva* applications and held that *the jurisdiction to grant Mareva injunctions was exercisable in cases where it appeared just and convenient to the court to grant the injunction, and the plaintiff had, inter alia, to show, on the evidence as a whole, that there was at least a good arguable case that he would succeed at the trial*, and that a refusal of an injunction would involve a real risk that a judgment or award in his favour would remain unsatisfied because of the defendant's removal of assets from the jurisdiction or dissipation of assets within the jurisdiction.
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> (emphasis added)

[44] Consequently, I find the requirement for the first limb of a *Mareva* injunction application has not been fulfilled by the plaintiff.

Whether Defendants Have Assets Within The Jurisdiction

[45] From the evidence presented before this court, I find that the plaintiff failed to prove that the defendants have assets within the jurisdiction. It is to be noted that the assets sought by the plaintiff in this application for *Mareva* injunction are not assets of the defendants and in particular the third defendant. The plaintiff admitted during oral submission that the land titles,

sales and purchase agreements, and related documents that were referred to in the application belong to some other individuals who are not a party in this suit, whilst the rubber stamp and letterheads belong to the plaintiff. Therefore, none of the assets sought in the application belong to the defendants.

[46] Further, the documents, identity cards, business cards, land titles, sales and purchase agreements, and all the documents related to real estate transactions sought in the application for a *Mareva* injunction are not assets if dissipated, would stultify any judgment in favour of the plaintiff. Moreover, the plaintiff has no lien on the land titles, the sale and purchase agreement, and the related documents sought. He has no *locus* to ask for these documents, especially so when the plaintiff was unsure whom are the parties involved.

[47] Also, there is no evidence that the purported assets are in the possession of the defendants. The plaintiff's allegation that the assets are within the possession, custody, and control is without proof.

[48] The plaintiff alleged that all payments for the real estate transactions were paid to the defendants. However, the plaintiff did not present any evidence to substantiate this claim. It remains uncertain what specific amounts are being referred to, and there is no proof provided to demonstrate that these funds have been deposited into the defendants' account.

[49] It is trite that it is incumbent upon the plaintiff to demonstrate the presence of assets in the possession of the defendants that can be subject to the *Mareva* injunction. However, in the current case, the plaintiff had not sufficiently identified, with the necessary level of specificity, the specific documents or assets of the defendants that that the plaintiff sought to freeze.

[50] The defendants contended that the plaintiff's application to freeze the assets is couched in an overly vague and ambiguous manner. Granting a *Mareva* injunction based on such indefinite terms could impose undue hardship and burden on the defendants, as they would face significant challenges in complying with such an onerous and draconian order.

[51] Perusal of the plaintiff's application, I find that the plaintiff did not sufficiently identify and specify the documents that the plaintiff sought to freeze. The assets sought in paras. 1(a) to (i) of encl. 12 are too wide, imprecise, and vague in description. Prayer 1(b), plaintiff sought to restrain the defendants from dealing with all conveyancing matters without particularising any specifics of any names, matter numbers, or naming the parties to the documents or transactions. Likewise, the subsequent prayers are also worded in a vague, ambiguous, and broad manner.

[52] It is a well-established legal principle that all court orders should be formulated in clear and unambiguous terms, particularly in cases involving injunctions. Failing to provide clarity may result in non-compliance being treated as contempt of court. Therefore, it is crucial to ensure that the terms of any injunction are precise and clear.

[53] Hence, I find the representation made in support of the application was inadequate for the court to hold that the defendants have assets within the jurisdiction. Thus, the second limb for a *Mareva* injunction was not met.

Whether There Is A Real Risk Of The Assets Being Dissipated Or Removed Before The Judgment In That There Must Be Solid Evidence To Establish The Risk

[54] The third limb to a *Mareva* injunction is of the utmost importance.

[55] It is trite law that the court when granting a *Mareva* injunction, must ensure the plaintiff had adduced solid evidence that there is a real risk that dissipation of assets will occur. Again, in *S & F International Ltd v. Trans-Con Engineering Sdn Bhd* (*supra*), where Abdoolcader FJ (as His Lordship then was) held the following:

> (2) **Before such relief is granted the plaintiff must secondly show that there is a risk that assets will be dissipated: he must demonstrate this by solid evidence**, *eg*, that the defendant's previous actions show his probity is not to be relied upon or that the corporate structure of the defendant infers that it is not to be relied upon, but mere proof that the defendant is incorporated abroad will not suffice; (3) In reaching its conclusion, **the Court should take into account the defendant's evidence as well as the plaintiff's**. (emphasis added)

[56] And in the case of *Ninemia Maritime Corporation v. Trave Schiffahrtsgesellschaft mbH & Co KG* [1983] 1 WLR 1412, CA where His Lordship Mustill J held the following:

> Dissipation of assets
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> It may be useful to start with a series of citations. First, there is the case from which the *Mareva* Jurisdiction derives its name, *Mareva Compania Naviera SA v. International Bulkcarriers SA, The Mareva* (1975) [1980] 1 All ER 213 at 215 per Lord Denning MR:
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> > **[There is jurisdiction to grant an injunction if] there is a danger that the debtor may dispose of his assets so as to defeat [the debt] before judgment**. (emphasis added)

[57] Therefore, the risk must be a real risk and not a mere fear that the assets would be dissipated and the existence of the real risk must be supported by solid evidence. The plaintiff cannot merely presume there is a real risk without proving there is a real risk.

[58] In this case, the plaintiff, informed that there is a real risk that the purported assets would be dissipated because, upon the filing of this action by the plaintiff, the third defendant had moved its office from No. 21-2, Tingkat 2, Jalan Tukul N15/N, Seksyen 15, 40000 Shah Alam, Selangor to No. 3-2B, Jalan Anggerik Vanilla N31/N, Kota Kemuning, 40460 Shah Alam, Selangor. The plaintiff contended the defendants' act proved that the defendants had already acted to dissipate the purported assets. However, this was only raised in the plaintiff's submission without any further proof of the said allegation.

[59] I am of the opinion, merely relocating to a new premise does not constitute solid evidence to support the claim that the defendants would engage in asset dissipation.

[60] Apart from the above-mentioned allegation, the plaintiff also asserted that there is a risk of the assets being dissipated based on the alleged abuse of the plaintiff's firm's identity, email, e-filing system account, letterhead, and signature by the defendants.

[61] These are the only facts presented by the plaintiff, and it is unsupported with solid evidence. This is obviously insufficient to establish there is a real risk of the assets being dissipated by the defendants.

[62] Further, the plaintiff did not provide any evidence demonstrating that the defendants acted dishonestly, thus posing a risk of asset dissipation. Furthermore, no evidence was presented to indicate any attempts to dissipate the assets by the defendants from the time the writ and statement of claim were filed on 12 January 2021 till the filing of this application on 4 February 2021. In fact, till the time this application was heard and disposed of by this court on 7 June 2023 (after the suit was transferred to this court from another court, NCVC7), the plaintiff had not made any complaints or shown any evidence that the defendants had attempted to dissipate the purported assets. Therefore, I agree with learned counsel for the defendants that there is really no real risk of dissipation of the assets by the defendants based on this reason alone.

[63] In light of the lack of transparency and inadequate evidence, I find there is no real risk of the assets being dissipated or removed from the jurisdiction. Therefore, any judgment obtained by the plaintiff would not be futile.

[64] I further refer to the case of *Motor Sports International Ltd & Ors v. Delcont (M) Sdn Bhd* [1996] 3 CLJ 483; [1996] 2 MLJ 605, where Gopal Sri Ram JCA (as His Lordship then was) held the following:

> *The provisions of O. 29 r. 2A were introduced by amendment in order to ensure that ex parte injunctions of any sort were not granted willy-nilly, but only in cases where they were truly called for.* In order to ensure that the policy behind the introduction of r. 2A is not defeated, *high courts must demand strict compliance*

A *with its terms. More so, when the relief applied for is in the nature of a Mareva or an Anton Piller type of injunction because of the incalculable harm and damage that may be caused to a defendant by the grant of either of these orders.*

(emphasis added)

[65] Hence, the available evidence in support of the application was B manifestly inadequate for the court to hold that there is a real risk of the purported assets being dissipated or removed before the judgment.

[66] The plaintiff in his submission attempted to convince this court, in the alternative, to grant an order for discovery. However, this is not a relief sought by the plaintiff in encl. 12; neither has the plaintiff moved this court C for the discovery under O. 24 of the Rules of Court 2012. The court did not allow the plaintiff's request. It is trite that the party making an application must move the court under a correct provision in the application and the party must specify the specific rules under which it was instituted, as it is a fundamental principle that a party must not take his opponent or the court D by surprise (see: the decision of His Lordship Gopal Sri Ram JCA (as His Lordship then was) in *Cheow Chew Khoon v. Abdul Johari Abdul Rahman* [1995] 4 CLJ 127; [1995] 1 MLJ 457).

[67] Having considered the evidence presented as a whole, I find that the plaintiff had failed to establish the requirements for a *Mareva* injunction as E discussed above.

[68] For the reasons stated above, I, therefore, ordered that the plaintiff's application for a *Mareva* injunction in encl. 12 be dismissed with costs of RM15,000.

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